

**SC-22****CWSRF SUPPLEMENTARY CONDITIONS (Maine DEP)**

The provisions of the Clean Water State Revolving Loan Fund (CWSRF) Supplementary Conditions as described below change, amend, or supplement the General Conditions and shall supersede any conflicting provisions of the CONTRACT. These provisions shall be used in conjunction with the most recent version of EJCDC documents No. 1910-8-FA (Contract General Conditions) and No. 1910-8-A-1-FA (Owner/Contractor Agreement), both the Funding Agency versions. All provisions of the General Conditions, which are not changed, amended, or supplemented, remain in full force.

Disclaimer (see 18.01 General Conditions)

Any awarded contract is expected to be funded in part by a State Revolving Loan and or State Grant. Neither the State of Maine nor any of its departments, agencies, or employees is or will be a party to this Agreement. The word "AGENCY" in the standard general conditions and the owner-contractor agreement refers to the Maine Department of Environmental Protection, if it is the sole funding agency. If the contract is funded by multiple agencies, then the word "AGENCY" refers to all the funding agencies.

Federal Safety and Health Requirements (see 6.09 and 6.13 General Conditions)

This project is subject to all the Safety and Health Regulations (CFR 29 Part 1926 and all subsequent amendments) as promulgated by the US Department of Labor on June 24, 1974, Contract Work Hours and Safety Standards Act (40 U.S.C. 327-330) as supplemented by 29 CFR part 5, and Occupational Safety and Health Standards (OSHA) (29 CFR part 1910). Contractors are urged to become familiar with the requirements of these regulations.

Minority and Women Business Enterprises Requirements (18.06 General Conditions)

The CONTRACTOR will take all necessary affirmative steps to assure that minority firms, women's business enterprises and labor surplus area firms are used when possible.

Affirmative steps shall include:

- (i) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
- (ii) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
- (iii) Dividing total requirements, when economically feasible into smaller tasks or quantities to permit maximum participation by small and minority business, and women's business enterprises;

- (iv) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises; and
- (v) Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

The goals for this PROJECT are a minimum of five percent (5%) MBE and WBE participation (1.3% MBE; 3.7% WBE). If these goals are not met the successful bidder must demonstrate a good faith effort toward meeting the goals. The successful bidder must submit to the OWNER, within ten (10) days after the bid opening or by the contract signing, the appropriate one of either Attachment A (the MBE/WBE goals having been met) or Attachment B (the MBE/WBE goals not having been met) completed in its entirety. In addition, the CONTRACTOR shall submit to the OWNER, a compliance report (Attachment C) listing the MBEs and WBEs, their work and the amount of payment to each, during each pay request period, for the duration of the contract. Attachments A, B, and C are included in this document.

NOTE: The most recent copy of the Maine Department of Transportation's "Certified Disadvantaged Business Enterprise Directory", or reference to its Internet location ([state.me.us/mdot/humnrres/o\\_equalo/cdwbed\\_h.htm](http://state.me.us/mdot/humnrres/o_equalo/cdwbed_h.htm)), should be attached and made part of the specifications.

For trades not listed in the MDOT directory, additional certified businesses may be listed in the Massachusetts State Office of Minority and Women Business Assistance (SOMWBA) web site, found at: <http://www.somwba.state.ma.us>

#### Contractor's and Subcontractor's Insurance\* (5.04 and 5.06 General Conditions)

The CONTRACTOR shall not commence work under this contract until they have obtained all the insurance required hereunder and the OWNER has approved such insurance, nor shall the CONTRACTOR allow any SUBCONTRACTOR to commence work on their subcontract until all similar insurance required of the SUBCONTRACTOR has been so obtained and approved. Approval of the insurance by the OWNER shall not relieve or decrease the liability of the CONTRACTOR hereunder.

Operations under the CONTRACT DOCUMENTS, whether such operations be by themselves or by any SUBCONTRACTOR under them, requires insurance to be written with a limit of liability of not less than \$1,000,000 for all damages arising out of bodily injury, including death, at any time resulting therefrom, sustained by any one person in any one accident; and a limit of liability of not less than \$1,000,000 aggregate for any such damages sustained by two or more persons in any one accident. Insurance shall be written with a limit of liability of not less than \$500,000 for all property damage sustained by any one person in any one accident-, and a limit of liability of not less than \$500,000 aggregate for any such damage sustained by two or more persons in any one accident.

The CONTRACTOR shall acquire and maintain, if applicable, Fire and Extended Coverage insurance upon the PROJECT to the full insurable value thereof for the benefit of the OWNER, the CONTRACTOR, and SUBCONTRACTOR as their interest may appear. This provision shall in no way release the CONTRACTOR or CONTRACTOR'S surety from obligations under the Contract Documents to fully complete the PROJECT.

\*If project is being co-funded with the U.S. Department of Agriculture, Rural Utilities Services, RUS's Supplemental Conditions also contain insurance provisions. The higher limits shall prevail.

The CONTRACTOR shall procure and maintain, at their own expense, during the CONTRACT TIME, in accordance with the provisions of the laws of the State of Maine, Workmen's Compensation Insurance, including occupational disease provisions, for all of their employees at the site of the PROJECT and in case any work is sublet, the CONTRACTOR shall require such SUBCONTRACTOR similarly to provide Worker's Compensation Insurance, including occupational disease provisions for all of the latter's employees unless such employees are covered by the protection afforded by the CONTRACTOR. In case any class of employees engaged in hazardous work under this contract at the site of the PROJECT is not protected under Worker's Compensation statute, the CONTRACTOR shall provide, adequate and suitable insurance for the protection of their employees not otherwise protected.

#### Bid Protests (See Instructions To Bidders)

All protests arising from the OWNER'S procurement practices must be submitted to the OWNER as soon as practical. The OWNER will investigate the basis for the protest, seek the advice of legal counsel, document all meetings and actions, and attempt to resolve the protest promptly and equitably. In the event that the protest is not settled, an appeal may be filed with the Department of Environmental Protection (DEP).

#### Contractor's Guaranty (5.01 A General Conditions)

The CONTRACTOR shall guarantee all materials and equipment furnished and Work performed for a period for one (1) year from the date of Substantial Completion. The CONTRACTOR warrants and guarantees for a period of one (1) year from the date of Substantial Completion that the Work is free from all defects due to faulty materials or workmanship and the CONTRACTOR shall promptly make such corrections as may be necessary, including repairs of any damage to other parts of the system resulting from such defects. The OWNER will give notice of observed defects with reasonable promptness. In the event that the CONTRACTOR should fail to make such repairs, adjustments, or other Work that may be necessary by such defects, the OWNER may do so and charge the CONTRACTOR the cost incurred. The Performance Bond shall remain in full force and effect through the guarantee period.

#### Payment of Employees

##### Minimum Wages

All mechanics and laborers employed or working upon the construction site work of the project, will be paid the full amounts due at time of payment computed at wage rates not less than State Minimum Wage regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

## Overtime Payments

An employer is obligated to make proper wage payments under the Fair Labor Standards Act, and the Contract Work Hours Standards Act, for hours worked in excess of 40 hours in a work week. An employee must receive compensation at a rate not less than one and one-half times the regular rate of pay (basic hourly rate) for all hours worked in excess of 40 hours per week.

## Wage Record of Contractor

The CONTRACTOR and each of subcontractor shall keep an accurate record showing the names, social security number, and occupation of each and all laborers, workmen, and mechanics employed by them in connection with this Project showing the hours worked, the title of the job, the hourly rate and the actual wages paid to each of them. A copy of such record shall be kept at the job site and shall be open at all reasonable hours to the inspection of the Bureau of Labor Standards, the OWNER, and the Department of Environmental Protection.

## Retention of Payroll Records

Payroll records, including original field notes and back up material will be maintained during the course of the work by the CONTRACTOR, including payroll of each subcontractor for a period of three years after the completion of the project.

## Payment to Contractor (14.02 and 14.07 General Conditions)

Upon substantial completion of the work, retainage in the amount of 2% of the total work will be retained for a period of 1 year from the date of substantial completion. In addition to the 2% retainage, the OWNER shall retain an amount sufficient to cover the estimated cost of the work still to be completed.

The CONTRACTOR will indemnify and save the OWNER harmless from all claims growing out of the lawful demand of SUBCONTRACTORS, laborers, workmen, mechanics, material men, and furnishers or machinery and parts thereof, equipment, tools, and all supplies incurred in the furtherance of the performance of the WORK. The CONTRACTOR shall, at the OWNER'S request, furnish satisfactory evidence that all obligations of the nature designated above have been paid, discharged, or waived. This may be required on a monthly basis. If the CONTRACTOR fails to do so the OWNER may, after having notified the CONTRACTOR, either pay unpaid bills or withhold from the CONTRACTOR'S unpaid compensation a sum of money deemed reasonably sufficient to pay any and all such lawful claims until satisfactory evidence is furnished that all liabilities have been fully discharged whereupon payment to the CONTRACTOR shall be resumed in accordance with the terms of the CONTRACT DOCUMENTS, but in no event shall the provisions of this sentence be construed to impose any obligations upon the OWNER to either the CONTRACTOR, the CONTRACTOR'S Surety, or any third party. In paying any unpaid bills of the CONTRACTOR, any payment so made by the OWNER shall be considered as a payment made under the CONTRACT DOCUMENTS by the OWNER to the CONTRACTOR and the OWNER shall not be liable to the CONTRACTOR for any such payments made in good faith.

### Claims or Disputes (16.01 General Conditions)

All claims or disputes between the OWNER and the CONTRACTOR must be settled informally using the DEP as a mediator or formally in a court of law. All resolved disputes and claims must be submitted to the DEP by *change order* for approval before payment.

Claims, disputes, and other matters in question arising out of or relating to the Contract Documents, or a breach thereof, that were unable to be settled informally through mediation, shall be settled by litigation in a court of competent jurisdiction.

### Posting Documents

The following documents must be posted and maintained by the CONTRACTOR at such place or places on the PROJECT site where employees can easily see them. The posters may be obtained, free of charge, from "Business Answers" 1-800-872-3838.

1. "Notice to Labor Union or Other Organizations of Workers" (Exhibit 2)
2. "Equal Employment Opportunity is the Law" poster
3. "Job Safety and Health Protection" poster
4. "Fair Labor Standards Act" poster
5. "Employee Polygraph Protection Act" poster
6. "Family and Medical Leave Act" poster (applicable to employers of 50 or more employees)
7. "Notice Relative to the Regulation of Employment" (State Poster)
8. "Minimum Wage" (State Poster)
9. "Whistleblowers' Protection Act" (State Poster)
10. "Sexual Harassment Law" (State Poster)
11. "Workers Compensation" (State Poster)
12. "Maine Employment Security Law" (applicable to employers who must pay unemployment tax). Available from the Unemployment Compensation Division of the Maine Dept. of Labor.

### Project Sign

The CONTRACTOR shall provide and erect a PROJECT sign as detailed and specified. The location of the sign shall be as directed by the ENGINEER. No other CONTRACTOR, SUBCONTRACTOR or material signs will be permitted on the sign. The CONTRACTOR shall maintain and keep the PROJECT sign in good condition until the work is completed when the sign will be removed. All other signs to be erected on the site shall be approved by the ENGINEER. Provide adequate supports for sign as site conditions may require and keep sign a proper distance above prevailing grade to permit public viewing.

**MBE/WBE  
ATTACHMENT A**

THE MBE/WBE GOAL HAVING BEEN MET, the following information must be submitted:

MUNICIPALITY: \_\_\_\_\_ STATE: \_\_\_\_\_

SRF PROJECT NO.: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_

- 1. Total dollar amount of the contract: \$ \_\_\_\_\_
- 2. Total dollar amount of the MBE participation: \$ \_\_\_\_\_
- 3. Percentage of MBE participation: % \_\_\_\_\_
- 4. Total dollar amount of WBE participation: \$ \_\_\_\_\_
- 5. Percentage of WBE participation: % \_\_\_\_\_
- 6. List of MBE/WBE subcontractors (fill out for each of MBE/WBE used):

**List of MBE/WBE firms to be used.**

Company Name	Contact Person	Phone	Type of Work	Amount

This attachment must be signed by an authorized representative of the bidder.

\_\_\_\_\_  
(Signature)

Name:  
Title:  
Address:  
Phone:

**MBE/WBE  
ATTACHMENT B**  
(page 1 of 2)

THE MBE/WBE GOAL NOT HAVING BEEN MET, the following information must be submitted:

MUNICIPALITY: \_\_\_\_\_ STATE: \_\_\_\_\_  
SRF PROJECT NO.: \_\_\_\_\_ CONTRACT NO.: \_\_\_\_\_

A. MBE/WBE Participation:

- 1. Total dollar amount of the contract: \$ \_\_\_\_\_
- 2. Total dollar amount of the MBE participation: \$ \_\_\_\_\_
- 3. Percentage of MBE participation: % \_\_\_\_\_
- 4. Total dollar amount of WBE participation: \$ \_\_\_\_\_
- 5. Percentage of WBE participation: % \_\_\_\_\_

B. MBE/WBE Solicitation:

List each minority and women-owned firm (whether or not on the Loanee's Project List) to which a letter of solicitation was sent. It is suggested that correspondence be sent by certified or registered mail since the burden or proof of positive efforts to utilize MBE/WBE firms rests with the bidder.

A copy of each solicitation letter MUST be attached.

<u>Minority-Owned Firm Contacted</u>	<u>Women-Owned Firm Contacted</u>
1) _____	1) _____
2) _____	2) _____
3) _____	3) _____
4) _____	4) _____
5) _____	5) _____
6) _____	6) _____
7) _____	7) _____
8) _____	8) _____
9) _____	9) _____
10) _____	10) _____

**MBE/WBE  
ATTACHMENT B**  
(page 2 of 2)

C. List all MBE/WBE firms to be used:

**List of MBE/WBE firms to be used.**

<b>Company Name</b>	<b>Contact Person</b>	<b>Phone</b>	<b>Type of Work</b>	<b>Amount</b>

D. List all MBE/WBE firms from which a bid or quotation was received which is not listed in Section C above and the reason the firm was not selected:

**List of MBE/WBE firms not to be used.**

<b>Company Name</b>	<b>Contact Person</b>	<b>Phone</b>	<b>Reason Not Selected</b>

This attachment must be signed by an authorized representative of the bidder.

\_\_\_\_\_  
(Signature)

Name:  
Title:  
Address:  
Phone: